

U.S. Application Serial No. 10/657,693  
Applicant: Higgs

REMARKS

Applicant respectfully requests the Examiner to reconsider the present application in view of the above amendments and following remarks:

1. The Specification:

Applicant has amended the specification as specified above to add subject matter that was originally contained in Claim 8, now canceled, but which may not have been specifically mentioned in the specification when filed. This subject matter has to do with a method of using a microenvironment to promote the sale of goods and/or services by a single retail tenant within the microenvironment. This is clearly described in original Claim 8, as follows (emphasis added):

"A method of promoting sales of particular goods and/or services by at least one retail establishment in a shopping center, comprising:

in a conventional shopping center having a plurality of retail establishments, providing a microenvironment within said shopping center having a theme associated with said particular goods and/or services of said at least one of said retail establishments;

locating said at least one of said retail establishments within a common area of said shopping center in or adjacent to said micro-environment; and

providing at least one activity within said micro-environment consistent with said theme to help promote sales of said particular goods and/or services offered by said at least one of said retail establishments."

For the above reasons, Applicant respectfully submits that this subject matter does not constitute new matter, and respectfully requests that it be added to the specification as amended above.

2. Rejection of Claims Under Section 112:

Claim 1 stands rejected under Section 112, second paragraph, on the grounds that the language is unclear. Applicant has canceled Claim 1, and therefore, respectfully submits that this rejection is no longer applicable.

3. Rejection of Claims Under Section 102:

Claims 1, 3, 6, 8, 10, 13, 15, and 19 stand rejected under Section 102(b) as being anticipated by the Wall Street Journal article dated Dec. 4, 2000 entitled "Promotional Ties to Charitable Causes Help Stores Lure Customers" (hereinafter

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"Zimmerman"). In particular, the Examiner asserts that Zimmerman teaches the method steps set forth in original Claim 1.

Zimmerman is directed to a promotional activity run by merchants and charities that offers discounts for a limited time to shoppers who donate to the charities. More specifically, Zimmerman relates to a temporary promotional program wherein charities offer a donation card to shoppers for a fixed price, i.e., \$50.00, wherein when consumers buy the card, the money raised by the sale goes to the charities, wherein, in turn, the retailers give consumers that purchase the card discounts on goods and/or services that they sell.

Upon carefully reviewing and considering Zimmerman's method, however, it should be clear that there are differences between Zimmerman's and Applicant's methods, as follows:

First, the Applicant's method is intended to be used by a developer of a shopping mall or complex as a means of not only promoting sales of goods and/or services by its retail tenants, but also attracting prospective retail tenants to occupy and lease space at the shopping mall. That is, Applicant's method relates in part to what a developer or operator would do to initially encourage and attract the right kind of tenants to occupy space at the shopping mall, which can help ensure that the right kind of retail merchants, and therefore, the right kind of shopping environment, will be provided there.

The following excerpt from Applicant's specification describes how a developer might use the present method:

"The development of a shopping mall typically involves a complex series of events that must be coordinated for the development to be successful. . . .

In the beginning, there must be a vision . . . marketing studies are often performed to determine the best location, as well as what kinds of retail establishments should occupy space at the mall. These decisions are often based on geographical and demographical marketing information about the kinds of communities that will eventually be located near the mall, as well as the economic statuses of the consumers who will eventually shop there. Various studies relating to the economic conditions and wealth statuses of the area, including future prospects for employment and growth, are likely to be conducted . . . .

Another issue that mall developers have to deal with involves selecting the right retail merchants that are going to occupy and lease space at the mall. This process can be complicated by the fact that

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negotiations often have to be entered into with respect to each prospective tenant, and each one presumably has its own interests and concerns that must be considered and discussed. Some prospective tenants may be essential to the mall, such as large department stores, which may be the focus of the initial development efforts. . . As is often the case, a decision by one tenant may end up being the reason that another tenant might agree to occupy space there . . .

Within this context, mall developers have a number of important options and decisions to make concerning the development of the mall . . . The present invention contemplates that mall developers will be able to attract prospective and desirable retail tenants by providing a microenvironment within the mall specifically designed to provide activities and entertainment that will help promote sales of the particular goods and services being offered for sale by the participating retail merchants. They are also designed to be entertaining and enjoyable to consumers so as to attract customers to the mall and to the stores" (emphasis added)." See page 6, line 7, through page 8, line 16.

Clearly, in this respect, Applicant's method relates at least in part to a process that begins while the shopping mall is being planned, organized and developed, unlike Zimmerman, which relates to a temporary promotion organized by charities and retail merchants after the shopping complex, if any, is completed.

In this respect, it should be clear that Zimmerman has nothing to do with the development of a shopping mall, nor with how a developer or operator of a shopping mall under common ownership encourages and attracts retail tenants to occupy space at a mall, as in the case of Applicant's method.

Contrary to what the Examiner asserts, Zimmerman does not teach or suggest a method of attracting retail merchants to occupy space at a shopping mall – the mere fact that there are retail spaces along 20 blocks of Madison Avenue in New York City does not imply that the discount card program of Zimmerman is being used to attract the merchants there – since the retail merchants are presumably already there – along Madison Avenue.

For these reasons, it should be clear that the Claims as amended above which are directed to a method that includes the steps of using the method to encourage retail tenants to occupy and lease space . . . [by] providing a shopping complex under common ownership having a plurality of individual spaces capable of being leased to individual retail tenants . . . " are distinguishable over Zimmerman.

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Second, Zimmerman relates to special activities that are not part of the ongoing business of the retail merchants or the shopping mall, but rather, a temporary program that is run for a limited time. In fact, Zimmerman states: "Some retailers find the programs frustrating because they are hard to plan for and the crowds can be overwhelming. . . . It's an imposition . . . Our sales go up so high, but our inventory is depleted. The chain has to bring in extra staff to handle the volume and it worries about becoming dependent on the programs for sales . . ." On the other hand, Applicant's method as specified in the new claims is intended to be part of the ongoing business and physical space of the shopping mall.

Third, Zimmerman relates to activities that are solely related to sales and discounts and money changing hands, whereas, the activities provided for by Applicant's method are entertaining on their own, and stand on their own, whether or not a promoted sale is ever made. That is, even consumers that may never buy a single product from the retail merchants in the microenvironment could still be attracted to the shopping mall to take part in the activities that are provided in the microenvironment, and therefore, would have an incentive to come to the mall for that reason alone. This is unlike Zimmerman which requires the buyer to buy something from the retail merchant to achieve a benefit, i.e., the only tangible benefit that a consumer can possibly obtain from Zimmerman's method is achieved by buying something first.

Based on the above distinguishing features, Applicant respectfully submits that the new claims are distinguishable over Zimmerman. For example, nothing in Zimmerman teaches or suggests a method used to encourage retail tenants to occupy and lease space at a shopping complex, comprising 1) providing a shopping complex under common ownership, 2) creating a physical microenvironment within the shopping complex having a theme relating to the goods and/or services to be sold by at least one retail merchant therein, 3) selecting and causing at least one retail tenant to occupy and lease space at the shopping complex, and 4) providing an activity within the microenvironment that is entertaining to customers and consistent with the theme of the microenvironment and designed to have the effect of promoting the goods and/or services sold by the retail merchant. Moreover, with respect to Claim 32, nothing in

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Zimmerman teaches or suggests a method that involves conducting activities relating to sports and other outdoor activities.

For all of the above reasons, Applicant respectfully submits that the claimed invention as set forth in Claims 20-39 is distinguishable over Zimmerman.

4. Rejection of Claims Under Section 103:

Claims 2, 3, 7, 9, 11, 14, and 16 stand rejected under Section 103 as being unpatentable over Zimmerman in view of the article entitled "Retailers gear up for big party: Businesses try quirky promotions during convention" (hereinafter the "AP Article"). In particular, the Examiner asserts that while Zimmerman does not disclose all of the features set forth in the claims, the AP Article does teach or suggest those features.

The AP Article simply relates to a party that helps to generate sales at a location where the party is being held. That is, it relates to retailers that have decided to take advantage of the publicity and promotional value attributed to having a major presidential convention held in their city, and using the party as a means of promoting the goods and services that they sell.

But again, the AP Article has nothing to do with encouraging retail tenants to occupy and lease space at a shopping complex. For example, as indicated above, Applicant's method is intended to be used by developers as a means of attracting prospective and desirable retail tenants to occupy and lease space at a shopping mall, which in turn, can help to promote the goods and/or services that they sell. Again, Applicant's method begins in part while the shopping mall is being planned, organized and developed, while the AP Article relates to a process used by existing merchants and retailers located in the vicinity of the party to be held, to promote the goods and/or services that they sell.

In this respect, it should be clear that the AP Article has nothing to do with the development of a shopping mall, nor with how a developer or operator of a shopping mall would encourage and attract retail tenants to occupy and lease space at the mall. Contrary to what the Examiner suggests, the retailers and merchants that are participating at the convention described in the AP Article are presumably already there – and therefore – wouldn't need to be attracted to that location.

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The AP Article, like Zimmerman, also relates to a special event that is not part of the ongoing business of the retail merchants or the shopping mall, i.e., it is a party that extends for a limited time. This is unlike Applicant's method which is intended to be part of the ongoing business and physical space of the shopping mall.

The AP Article also does not teach or suggest the use of activities relating to sports and other outdoor activities, as the Examiner suggests.

For these reasons, it should be clear that the Claims as amended above are distinguishable over the combination of Zimmerman and the AP Article as well.

5. Conclusion:

For the above reasons, Applicant respectfully submits that the claims pending in this application are in condition for allowance, and earnestly requests the Examiner to enter a Notice of Allowance in this case.

Very Truly Yours,



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